

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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Cisco WebEx LLC Request for )  
Review of a Decision of the )  
Universal Service Administrator )  
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WC Docket No. 06-122

**COMMENTS OF INTERCALL, INC.**

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## SUMMARY

InterCall, Inc. (“InterCall”) submits these comments in opposition to Cisco WebEx LLC’s (“Cisco”) Request for Review of a Decision of the Universal Service Administrator. InterCall is a direct competitor of Cisco and is its largest reseller. In compliance with the *InterCall Order*, InterCall has contributed to the universal service fund based on audio revenues that it earns from its bundled conferencing and collaborative solutions. Cisco, on the other hand, has avoided certain of its contribution obligations for the same services. This has caused an industry-wide competitive distortion in the market for collaborative conferencing tools that the Commission should remedy.

First, the audio component of WebEx is not an integrated service under the *InterCall Order*. As USAC correctly found, the audio component is not integrated because it is functionally separable from the WebEx collaboration tool. Customers pay for the service separately and receive separate bill detail for the audio component. Cisco admits that customers may (and sometimes do) utilize the audio service separate from the web collaboration, and may also forego WebEx’s audio component altogether in favor of a third-party audio service. Additionally, as the Commission found in the *InterCall Order*—and consistent with its earlier rulings in the *2005 Wireline Broadband Order* and *2006 Prepaid Calling Card Order*—WebEx’s ancillary host control features are insufficient to transform the entire service into an information service.

The Commission should level the playing field for conferencing providers to ensure competitive neutrality in the industry by resolving this appeal quickly. Under Section 254 and well-established Commission precedent, universal service obligations must be imposed in a uniform and competitively neutral manner. With the current contribution factor in the 15 – 17%

range, Cisco has gained an unfair and unjustified advantage over its compliant competitors, like InterCall, by excluding audio minutes from its contribution base. Because such revenues are properly assessable, the Commission should reject Cisco's Request for Review and require it to contribute into the universal service fund retroactive to the date of the *InterCall Order*. If, on the other hand, the Commission departs from its previous treatment of conferencing services and agrees with Cisco, competitive neutrality mandates that the Commission provide all other conferencing service providers with an opportunity to restate their revenues back to 2008. To that end, the Commission should waive the one-year limitation on restating revenues. This remedy will allow those providers that applied USF contribution obligations in good faith reliance on the *InterCall Order* to recover those contributions and ensure they do not contribute more than their competitors on the same services.

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	i
I. BACKGROUND .....	2
II. CISCO'S USAC APPEAL SHOULD BE DENIED .....	5
A. WebEx Audio Is Not an Integrated Service.....	5
B. The Commission Should Level the Playing Field to Provide Competitive Neutrality Among Conferencing Providers .....	10
1. The Commission Should Apply Its Ruling Retroactively to the Effective Date of the <i>InterCall Order</i> .....	11
2. If the Commission Accepts Cisco's Argument that WebEx is an Integrated Service, It Should Allow All Similarly Situated Providers to Amend Their Annual 499-A Worksheets.....	13
III. CONCLUSION.....	14

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	)	
In the Matter of	)	
	)	
Cisco WebEx LLC Request for	)	WC Docket No. 06-122
Review of a Decision of the	)	
Universal Service Administrator	)	
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InterCall, Inc. (“InterCall”), through its undersigned counsel and pursuant to the Commission’s *Public Notice* in the above-captioned proceeding,<sup>1</sup> respectfully submits these Comments in response to Cisco WebEx LLC’s (“Cisco”) Request for Review of a Decision of the Universal Service Administrator (“Request for Review”) finding that Cisco is subject to universal service contribution obligations for past and future revenues associated with the audio component of Cisco’s WebEx service.<sup>2</sup>

<sup>1</sup> See Public Notice, *Wireline Competition Bureau Seeks Comment on Cisco WebEx LLC Request for Review of a Decision by the Universal Service Administrative Company*, DA 13-717 (rel. Apr. 15, 2013).

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advanced audio, event, Web, and video conferencing. And yet, although InterCall has paid USF on all audio bridging services in compliance with its universal service contribution obligations, Cisco has not. In its audit report, USAC correctly found that Cisco's WebEx service was not an integrated service, and therefore properly determined that Cisco is subject to direct contribution obligations for the audio component of that service.<sup>3</sup>

As explained below, the Commission should uphold USAC's audit report and deny Cisco's Request for Review. Alternatively, if the Commission agrees with Cisco, it should allow all similarly situated conferencing service providers to modify their 499-A forms to ensure competitive neutrality.

## **I. BACKGROUND**

InterCall is the largest stand-alone conferencing and collaboration provider in the world. Founded in 1991, InterCall helps people and companies be more productive by providing advanced, yet easy-to-use audio, event, Web, and video conferencing solutions. InterCall is a direct competitor of Cisco, and is also the largest reseller of WebEx.<sup>4</sup> When InterCall offers WebEx on a resale basis, its customers may choose to utilize InterCall's or WebEx's audio capabilities.

In the wake of the *InterCall Order*,<sup>5</sup> which imposed a direct contribution obligation on providers of stand-alone audio bridging services, InterCall has taken significant

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<sup>3</sup> See USAC Audit Report at 11-18.

<sup>4</sup> In addition to WebEx, InterCall resells Microsoft and Adobe collaboration products, which compete with WebEx. InterCall reports assessable audio revenues for those products as well.

<sup>5</sup> See *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, Order*, Order, CC Docket No. 96-45, 23 FCC Rcd 10731 (rel. Jun. 30, 2008) ("InterCall Order").

and costly steps to comply with the Commission's universal services rules. To that end, when InterCall offers its conferencing solution to customers, or when it resells WebEx to customers, it reports and contributes based on audio revenues it obtains through that bundled service. InterCall understands this to be the general practice in the conferencing industry.

Cisco appeals a recent audit report issued by the Universal Service Administrative Company ("USAC"). USAC found that Cisco had failed to report certain telecommunications revenues derived from the audio component of its WebEx service.<sup>6</sup> WebEx provides a number of tools for its customers, including desktop and document sharing, digital whiteboards, video integration, remote keyboard and mouse control, host controls, chat, presence information, and audio integration. In addition, WebEx allows its customers to collaborate using a traditional telephone, mobile phone, or VoIP service. The audio component of WebEx is similar to other stand-alone audio bridging services, like InterCall's, and is used simultaneously with WebEx's web-based collaboration tool.

In the audit, USAC found that certain audio features within WebEx's online collaboration tool were separable telecommunications services, and therefore were assessable for purposes of USF contribution.<sup>7</sup> However, USAC did not contend that WebEx's web-based collaboration tools are subject to USF contributions.<sup>8</sup> In support of its finding, USAC concluded that the audio and web components were "separate and distinct services" because (1) the customer has "the ability . . . to combine the information service with a variety of different audio options," including "audio bridging, non-interconnected VoIP, a third party audio bridging

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<sup>6</sup> See USAC Audit Report at 9, 18.

<sup>7</sup> See *id.* at 11-14, 28-29, 35-37.

<sup>8</sup> See *id.* at 12, 37.

service, or an internal conferencing service”; (2) customers may “use only the audio bridging portion of the WebEx platform collaboration service, without using the WebEx desktop and document sharing application”; and (3) “the additional desktop and document sharing features that a customer can access when the customer also uses [Cisco’s] audio bridging service . . . do not alter the fundamental character of the voice transmission for [Cisco’s] audio bridge such that it is transformed into an enhanced, or information, service.”<sup>9</sup> In short, “the customer receives two distinct products (voice and data) that must be accessed by participants through two different channels . . . .”<sup>10</sup>

Moreover, USAC found that Cisco’s proposed allocation methodology for the audio-bridging revenues that it did report were not compliant with the Commission’s rules.<sup>11</sup> In particular, USAC found that because the actual gross revenues for Cisco’s audio-bridging service could be determined from Cisco’s corporate books, it was improper for Cisco to rely on the “fair market value” of audio-bridging services when reporting its audio-bridging revenues.<sup>12</sup> As a result, USAC required WebEx to report revenues from all audio minutes, as reflected in Cisco’s corporate books as telecommunications services.<sup>13</sup>

Following the USAC Decision, Cisco filed the instant Request for Review.

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<sup>9</sup> See *id.* at 13; see also *id.* at 35-37.

<sup>10</sup> See *id.* at 36.

<sup>11</sup> See *id.* at 15. Cisco had reported “audio only minutes” as telecommunications in two situations: (1) where conference participants joined a conference via the PSTN before the host joined the meeting (“join before meeting” minutes); and (2) where a meeting was scheduled and initiated through the audio-bridging service rather than through the WebEx online collaboration service (“personal conferencing” minutes). See *id.* at 14-15. All other audio minutes were considered integrated and as a result were not reported as assessable telecommunications revenues. See *id.* at 15.

<sup>12</sup> See *id.* at 15, 38; see also Request for Review at 17-19.

<sup>13</sup> See *id.*



## **II. CISCO'S USAC APPEAL SHOULD BE DENIED**

InterCall opposes Cisco's request for the following two reasons. First, the audio component of WebEx is not sufficiently integrated to render the entire service an information service, but rather more closely resembles a bundle of telecommunications with information services.<sup>14</sup> As such, Cisco is under an obligation to allocate the revenue attributable to its audio service and to contribute to the fund based on its audio service revenues.<sup>15</sup> Second, Cisco's failure to contribute to the fund based on its telecommunications revenues has provided it with an unfair and unjustified competitive advantage that should be remedied to comply with Section 254's mandate of competitive neutrality.

### **A. WebEx Audio Is Not an Integrated Service**

In its Request for Review, Cisco argues that it is not required to contribute into the universal service fund for the audio component of its WebEx service because WebEx is an integrated information service. InterCall disagrees.

First, like the audio bridging services examined in the *InterCall Order*, WebEx's audio service is functionally separable from its WebEx collaboration tool (an information service). In order to be considered an "integrated" information service, a telecommunications

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<sup>14</sup> For clarity, InterCall uses the term "bundling" to describe Cisco's offering of both WebEx and audio minutes to the same customer because this is how the term is commonly used in the marketplace. In the audit report, USAC refers to Cisco's offering as "one-stop shopping," reflecting an arrangement "in which customers may purchase the components of a bundle, priced separately, from a single supplier." *See* USAC Audit Report at 37 n.112. In either formulation, customers may receive, at their option, one or more services separately.

<sup>15</sup> InterCall agrees with Cisco and USAC that WebEx's desktop and document sharing services and its active talker and speaker features are information services. *See* Request for Review at 6; *see also* USAC Audit Report at 12, 30.

component must be inextricably intertwined with an information service.<sup>16</sup> The analysis turns on “what the entity is ‘offering . . . to the public,’ and customers’ understanding of that service.”<sup>17</sup> As the Commission explained in the *2005 Wireline Broadband Order*, a service is integrated where end users “expect to receive (and pay for) a finished, functionally integrated service,”<sup>18</sup> not separate telecommunications and information components. As such, where a user must purchase audio capabilities separately from the information service, and may use those capabilities on a stand-alone basis (or not at all), the audio capabilities are not integrated.

Here, the audio component is not integrated because it can be purchased separately, it can be used as a stand-alone service, and it can be foregone altogether in favor of a third-party audio solution (or integrated web-based VoIP). Indeed, as USAC found, WebEx audio is even billed separately.<sup>19</sup> Cisco’s service, while it involves a different type of information service capability than those addressed in the *InterCall Order*, nonetheless is offered in the same way that the recording and host control features were offered in that Order. In both cases, the services are made available at the same time, but are not integrated with each other. Thus, the *InterCall Order*’s analysis controls in this situation as well.

The fact that Cisco’s sales team apparently claims integration of these components in its marketing efforts does not change these facts.<sup>20</sup> Indeed, the “post-purchase behavior” that Cisco dismisses in its Request for Review is perhaps the strongest evidence that,

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<sup>16</sup> See *In re Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, 11539 ¶ 80 (rel. Apr. 10, 1998).

<sup>17</sup> See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, Report and Order and Notice of Proposed Rulemaking, FCC 05-150, 20 FCC Rcd. 14853, 14910 ¶ 104 (rel. Sept. 23, 2005) (“2005 Wireline Broadband Order”).

<sup>18</sup> See *id.*

<sup>19</sup> See USAC Audit Report at 10.

<sup>20</sup> See Request for Review at 3 (describing sales materials claiming integrated features).

“from the end user’s standpoint,” the services are separate.<sup>21</sup> The end user understands that he or she must separately purchase audio minutes of service, and may utilize third-party audio solutions rather than WebEx’s audio service when engaging in WebEx sessions. The end user understands that he or she may use the audio component as a stand-alone service without utilizing the enhanced functionalities. For example, WebEx subscribers are able to (or at least, at the relevant time, were able to) hold audio only conference calls that are indistinguishable from those evaluated in the *InterCall Order*.<sup>22</sup> Cisco offers these options because end users demand them. To be sure, “[i]n today’s competitive environment, any service that did not accommodate these users would be quickly discarded in favor of one that did.”<sup>23</sup> But the end result is the same: the end user understands in both price and in practice that the audio service is separate. Therefore, the audio component of WebEx is not sufficiently integrated to render the entire service an information service.

Second, under existing Commission precedent, WebEx’s ancillary features are insufficiently integrated with the audio component to transform the entire service into an information service. In the *2006 Prepaid Calling Card Order*, the Commission found that there must be “functional integration” between information and telecommunications capabilities to

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<sup>21</sup> See Request for Review at 10-12 (arguing that “what a customer can do after purchasing an offering” does not affect a service’s classification).

<sup>22</sup> See Request for Review at 6 n.9 (Cisco allowed customers to engage in “traditional audio-only conference calls.”). It is not clear from the record whether Cisco continues to allow this use.

<sup>23</sup> See *Petition for Partial Reconsideration and Clarification of the InterCall Order of Global Conference Partners, Petition for Reconsideration of A+ Conferencing, Ltd., Free Conferencing Corporation, and The Conference Group*, CC Docket No. 96-45, Comments of Cisco Systems, Inc., at 8 (Sept. 8, 2008).

transform a telecommunications service into an information service.<sup>24</sup> Thus, a telecommunications service is not an integrated service where it is “offered to consumers . . . as a separate and distinct telecommunications service that is packaged with additional capabilities.”<sup>25</sup> In the *InterCall Order*, as reaffirmed in the *InterCall Reconsideration Order*, the Commission found that traditional audio conferencing features including “muting, recording, erasing, and accessing operator services,” along with “whiteboarding and other computer capabilities that may be used simultaneously with the voice teleconference,” although offered to users with all audio bridging services, were not functionally integrated with the audio bridging itself. To the contrary, the audio bridging could be used “with or without” accessing these enhanced features.<sup>26</sup> Cisco’s WebEx service is no different.

As described above, Cisco offers the audio component of WebEx on a separate basis from its web-based platform. That is, even after obtaining a basic WebEx subscription, the customer must separately purchase WebEx’s audio capabilities. Moreover, the host controls of Cisco’s WebEx service fall well within the categories of add-on features, like muting, that the Commission has already twice rejected as insufficient to transform telecommunications into an

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<sup>24</sup> See *Regulation of Prepaid Calling Card Servs.*, Declaratory Ruling and Report and Order, FCC 06-79, 21 FCC Rcd. 7290, 7295 ¶ 15 (rel. Jun. 30, 2006) (“2006 Prepaid Calling Card Order”). In particular, the Commission determined that the service was not an information service because there was “simply no functional integration between the information service features and the use of the telephone calling capability with menu-driven prepaid calling cards.” *Id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *InterCall Order* ¶¶ 12-13; see also *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, Petitions for Reconsideration and Clarification of the InterCall Order, Global Conference Partners, A+ Conference Ltd., Free Conferencing Corporation, and The Conference Group*, WC Docket No. 06-122, CC Docket No. 96-45, FCC 12-10, Order on Reconsideration ¶ 13 (rel. Jan. 27, 2012) (“InterCall Reconsideration Order”).

information service.<sup>27</sup> Therefore, the Commission should rule, consistent with its prior orders, that the add-on features of WebEx do not convert its audio capabilities into an information service.

Similarly, the Commission should reject Cisco's alternative request that, if its audio bridging minutes are subject to USF contributions, it may contribute based on the "fair market value" of its service, not what Cisco actually charges.<sup>28</sup> Cisco contends that its audio function "contains more than audio," citing to host control features as the difference.<sup>29</sup> These features do not differ significantly from the host control features evaluated in the *InterCall Order*, and cannot be used as grounds for not contributing based on Cisco's per-minute audio charge.<sup>30</sup> To the extent that the cost of WebEx "audio minutes" reflects *other* features apart from these host controls, Cisco should allocate its contributions to accurately estimate the audio-only component, rather than choosing what it views to be the "fair market value" of the service.<sup>31</sup>

InterCall is concerned that a "fair market value" approach to universal service contributions will lead to an increased competitive distortion across the conferencing industry. There is no public, objective measure of the fair market value of audio bridging services. Prices can and do vary significantly, depending upon market forces, customer demands, ancillary service arrangements, and other factors. Allowing providers to self-select a "fair market value"

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<sup>27</sup> See USAC Audit Report at 14, 29-30.

<sup>28</sup> Request for Review at 17-19.

<sup>29</sup> *Id.* at 17-18 (citing an "active speaker feature" and "the ability for a host to control aspects of the audio stream from a computer").

<sup>30</sup> Compare *InterCall Order* ¶¶ 12-13.

<sup>31</sup> Telecommunications Reporting Worksheet, FCC Form 499-A (2010): Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms ("2010 FCC Form 499-A Instructions") at 20, 30; USAC Audit Report at 29-30 (citing *InterCall Reconsideration Order* ¶ 13).

to use as a basis for contributions may create incentives reduce contributions by assigning an artificially low rate that would not be subject to disclosure or scrutiny.<sup>32</sup> Indeed, there is nothing in Cisco's proposal that would ensure the assigned fair market value is in fact fair, and there is no disclosure of the source of the fair market value estimate. The Commission should support a solution that results in a uniform contribution framework, and does not lead to potential gaming by providers. Therefore, the Commission should reject Cisco's request to report revenues based on a fair market value standard. Cisco should report its total audio revenues or a reasonable allocation of those revenues attributable to audio minutes.

**B. The Commission Should Level the Playing Field to Provide Competitive Neutrality Among Conferencing Providers**

Cisco's failure to comply with the *InterCall Order* creates a gross competitive imbalance that the Commission should remedy in the interest of competitive neutrality. Section 254 of the 1996 Telecommunications Act requires the Commission to implement rules that ensure telecommunications carriers and other providers of telecommunications contribute to the universal service fund "on an *equitable and nondiscriminatory basis* . . ."<sup>33</sup> Interpreting this standard, the Commission mandates that universal service obligations be imposed in a "competitively-neutral manner."<sup>34</sup> In the *InterCall Order*, the Commission found that "a uniform application of USF contribution obligations to *all* audio bridging service providers . . .

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<sup>32</sup> Indeed, there is nothing to prevent a provider, under Cisco's proposal, from reporting a "fair market value" below the cost of the provider's service. When a provider allocates revenues using its own stand-alone price for a service, the market availability of the stand-alone service disciplines the rate used. Any below cost or artificially low rate would be discouraged by market forces.

<sup>33</sup> See 47 U.S.C. § 254(d).

<sup>34</sup> See *InterCall Order* ¶ 17 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183 ¶ 795 (1997) ("Universal Service First Report and Order")).

promote[s] the public interest by establishing a level playing field and encouraging open competition among providers of audio bridging services.”<sup>35</sup>

Cisco’s failure to contribute to the universal service fund based on the audio component of its WebEx service has provided it with an unfair and unjustified competitive advantage. The conferencing service provider market is extremely competitive. As such, a consumer faced with similar service offerings will readily choose the cheaper option. With contribution factor in the 15 – 17% range, Cisco’s decision to avoid its universal service obligations affords it with an improper leg-up that distorts the market and lures customers away from competitors, like InterCall, who have complied with the Commission’s rules.<sup>36</sup>

To ensure a level playing field for conferencing service providers, the Commission should uphold USAC’s finding and require Cisco to pay into the universal service fund for applicable audio-bridging revenues back to the effective date of the *InterCall Order*. In the alternative, if the Commission accepts Cisco’s argument, the Commission must provide all similar conferencing providers with an opportunity to restate USF contribution amounts for the same time period, and should waive the one-year limitation on revenue restatements.

**1. The Commission Should Apply Its Ruling Retroactively to the Effective Date of the *InterCall Order***

Other providers (including InterCall) have interpreted the *InterCall Order* to require payment of USF contributions on audio minutes that Cisco has excluded from its contribution base. In order to rectify the significant price advantage that Cisco has unfairly

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<sup>35</sup> See *id.* ¶ 25 (citing Universal Service First Report and Order, 12 FCC Rcd at 9183 ¶ 795) (emphasis added).

<sup>36</sup> For example, although a customer buying WebEx from Cisco or InterCall will receive an identical bundle of audio and web services, InterCall passes through its universal service obligations, while Cisco does not.

enjoyed since adopting its non-contribution strategy, competitive neutrality dictates that the Commission reject Cisco's Request for Review and apply USAC's finding retroactively to the effective date of the *InterCall Order*.

Generally, decisions in adjudicatory cases such as this one require retroactive application, unless the decision would result in "manifest injustice."<sup>37</sup> For example, in the *InterCall Order*, the Commission declined to apply its ruling retroactively, recognizing that the Commission contributed to an industry understanding that stand-alone audio bridging providers were not obligated to make direct contributions into the universal service fund.<sup>38</sup> Indeed, in that case, both the stand-alone audio bridging providers and their underlying carriers operated under the understanding that stand-alone providers did not have direct contribution obligations.<sup>39</sup> The FCC took partial responsibility for the confusion, noting its actions contributed to a "lack of clarity regarding the direct contribution obligations" of audio bridging service providers.<sup>40</sup> Based on this uncertainty, the Commission ruled that "this unique instance" justified a prospective application of its order.

The circumstances here are different from those in the *InterCall Order*. The *InterCall Order* put the entire audio bridging industry on notice that all providers were subject to direct contribution obligations. Indeed, Cisco was aware of its obligations, and notes in its Request for Review that it "reported as telecommunications all revenues associated" with its "traditional audio-only conference calls."<sup>41</sup> Moreover, as explained above, the Commission has

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<sup>37</sup> See *Prepaid Calling Card Order* ¶ 41.

<sup>38</sup> See *InterCall Order* ¶ 24.

<sup>39</sup> See *id.* ¶ 23.

<sup>40</sup> See *id.* ¶ 24.

<sup>41</sup> See Request for Review at 6 n.9.



specifically rejected many of the arguments that Cisco raises in its Request for Review. To apply USAC's ruling against Cisco only on a prospective basis would allow it to maintain an ill-gotten competitive advantage that it obtained by skirting obligations that the remainder of the industry undertook in good faith. Competitive neutrality demands that the Commission deny Cisco's Request for Review, uphold USAC's audit finding, and apply USAC's ruling retroactively to the effective date of the *InterCall Order*.

2. **If the Commission Accepts Cisco's Argument that WebEx is an Integrated Service, It Should Allow All Similarly Situated Providers to Amend Their Annual 499-A Worksheets**

If, despite the reasons explained above, the Commission agrees with Cisco that the audio component of Cisco's WebEx product is an integrated service, then it should permit other conferencing service providers to amend their annual Form 499-As to discount the amounts that they had been contributing for universal service. In doing so, the Commission must also waive the one-year revision deadline to permit conferencing providers to revise their 499-As retroactively to effective date of the *InterCall Order*.

InterCall, as explained above, is Cisco's largest reseller of WebEx services. InterCall offers WebEx collaboration, with either Cisco's or InterCall's audio conferencing minutes. Many other conferencing service providers offer functionally similar services to WebEx as well. But the difference is that InterCall and many others have recognized the *InterCall Order* to apply to all similarly situated providers and have contributed where Cisco does not. It would be inherently unfair to place these providers at a competitive disadvantage simply because they complied with the Commission's earlier pronouncements. Therefore, if the Commission agrees with Cisco that audio minutes are integrated with web-based collaboration, in order to maintain a level playing field, the Commission must provide all other conferencing

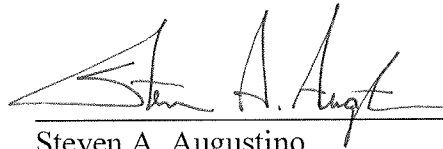
service providers with an opportunity to correct for contributions previously made into the fund. This is the only way to negate any advantage that was afforded to Cisco in the period between the *Order* and the resolution of its Request for Review.

### **III. CONCLUSION**

For the reasons discussed above, the Commission should deny Cisco's Request for Review and require it to contribute to the fund back to the effective date of the *InterCall Order*. Should the Commission disagree, it must allow similarly situated audio-bridging providers to restate their USF obligations for the same time period, waiving the one-year limitation on downward revisions.

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